

A NEW SUBTLE, CUNNING ATTEMPT TO RESURRECT THE HARAAM MPL ISSUE

THE PURVEYORS OF the haraam so-called Muslim Personal law (MPL) which is a satanic attempt to subvert the Shariah of Allah Ta'ala, despite having miserably failed over the past two decades in several abortive attempts to have MPL imposed on the Muslim community, are once again making another abortive haraam attempt to resurrect the Kufr Bill which one Muslim professor of law has described as the "*The B. BILL*". We, confess that we are unaware what exactly this designation, i.e. "*B. Bill*", signifies. However, someone informs us that it is utilized in a pejorative sense. He says that when a legal bill is palpably silly in terms of the legal profession, then the bill is mockingly dubbed with a crude pejorative title to connote its ludicrousness and legal untenability.

Be that as it may. While the MPL measure is a "B. Bill" according to legal experts, it is worse in terms of the Shariah. It is nothing short of a K. Bill, i.e. KUFR BILL since its entire fabric is kufr – in violent conflict with the Shariah of Allah Ta'ala.

One ardent votary of the B. Bill — K. Bill or MPL bill, Mr. M.S. Omar who is hell-bent on promoting this un-Islamic and anti-Islamic measure, despite having failed several times in the past, and very recently in the Constitutional Court, to force the K. Bill down the throats of the Muslim community, has now once again adopted a very cunning plot in his nefarious attempt to get the MPL-K. Bill process resurrected.

In this regard, Mr. M.S. Omar has prepared an article which he has forwarded to an academy of liberal molvies in India for the extravagation of a 'fatwa' to prepare the grounds for the resurrection of the corpse of the K. Bill or B. Bill or the MPL bill as it is commonly and popularly known. His puerile article prepared in Arabic, according to the academy molvies of India, will be put up for discussion next year February.

The article of Mr. Omar pivots on an extremely repugnant postulate of KUFR. In his article, the wayward Mr. Omar makes a shaitaani attempt to gain a 'fatwa' from some liberal molvies – a fatwa to upset and abrogate a divine injunction of Islam – an injunction on which there exists Consensus (Ijma') of the Ummah – Ijma' of all Four Math-habs of Islam. It is a Divine Injunction structured on what is termed *Nusoos-e-Qatiyyah* or Qur'aanic and Hadith proofs of Absolute Certitude.

This Divine Injunction which Mr. Omar seeks to have negated, is:

A kaafir judge/court has no wilaayat (legal jurisdiction) over a Muslim. In terms of this divine principle of the Shariah, verdicts of a secular court pertaining to Muslim marital and other affairs have no Shar'i validity. Mr. M. S. Omar is making a dastardly kufr attempt to have this fourteen century divine injunction of the Shariah abrogated as the first move in the conspiracy to resurrect the K. Bill./B. Bill/MPL Bill. In his article he cunningly attempts to pull wool over the eyes of the liberal molvies of the India academy with the false and baseless notion that Muslims in South Africa have absolutely no option other than to take the secular court route to solve their marital disputes and affairs. On the basis of his conjectural falsity, Mr. M. S. Omar seeks from the academy molvies a silly 'decree' to cancel Islam's Injunction and to legalize the haraam kufr postulate of the satanically conjectured 'validity' of a kaafir's wilaayat over Muslims. In other words, if a secular court rules that a Shar'i Talaaq is not valid, then this kufr ruling will be valid. In short, whatever ruling the kaafir court issues will be the final word.

While the K. Bill culprit does not say so in these terms, the objective of his vile quest to tamper with and overrule the Shariah is palpably clear. The Mujlisul Ulama of South Africa's has prepared a detailed response to Mr. M.S. Omar's plot. Those interested, may write for a copy. The conflict between Haqq and baatil is perennial, and shall continue until the end of earthly time. It is the Waajib duty of all Muslims to oppose all attempts made by the deviate modernists and liberal molvies whose objective underlying the K. Bill/B. Bill/MPL Bill is the resurrection of the kufr MPL bill which was beaten down several times over the past two decades. Insha'Allah, the deviates will not succeed in shoving the B/Bill down the throats of Muslims.

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THE QUESTION OF CONFERRING WILAAYAT TO A KAAFIR COURT OVER MUSLIMS

An article on the abovementioned issue, authored by a lawyer, Mr.M.S. Omar, has come to our attention. The objective of Mr.Omar is the bestowal of *Wilaayat* to a kaafir judge over Muslims living in non-Muslim countries.

The solitary ground tendered by Mr.Omar for his view is *Dhuroorah*, viz., that there exists an imperative need for investing kuffaar judges in non-Muslim lands with *Wilaayat* over Muslims to ensure that the verdicts of the kuffaar courts in Shar'i matters will be clothed with the same authority and validity as the verdicts of a Muslim Qaadhi of a Shar'i court in an Islamic land.

Although Mr.Omar confines the *Wilaayat* to only such court decrees which will conform with the Shariah, his entire argument pertains to an unreal situation because the kuffaar courts in South Africa do not have the power to issue decrees in terms of the Shariah nor do they apply the Shariah's standards for *Shahaadat*. The courts are obliged to issue decrees only in terms of the laws and constitution of the land.

The issues for scrutiny in this regard are:

- (a) Does there really exist such a *Dhuroorah* necessitating abrogation of a fourteen century *Ijmaa-ee* Shar'i injunction on which there exists the Consensus of all Four Math-habs, viz. *a kaafir has no wilaayat over Muslims*.
- (b) If such a *Dhuroorah* does exist, how will a fatwa confirming the validity of a kaafir court's *Wilaayat over Muslims* be practically implemented by the kuffaar courts in South Africa?
- (c) If there is a real problem pertaining to resolution of Muslim disputes in marital and other spheres of Muslim life, is there no way for resolving such disputes other than resorting to a kaafir court and conferring it with *wilaayat* over Muslims?
- (d) Hitherto how did Muslims living in South Africa for centuries resolve their marital and other disputes?

According to Mr.Omar there exists such a *Dhuroorah*. In the introduction to his article the lawyer, M.S.Omar makes a misleading claim. The impression which he seeks to convey is that Muslims living in South Africa are compelled to submit their marital affairs for adjudication to non-Muslim courts, hence he avers:

"The Islamic legal system is not found there to resolve disputes and terminate khilaaf (discord, argument, dissension)...."

Firstly, the law of the country does not compel Muslims to proceed to the secular court for resolving their disputes regardless of the nature of such disputes.

Secondly, since time immemorial, there have always existed Ulama organizations throughout the country for rendering services to the Muslim community in Shar'i issues.

Thirdly, Muslims have generally referred and still do refer their disputes to the Ulama for terminating disputes and for the obtaining Shar'i resolutions.

However, there are many Muslim who are not contented with the rulings of the Shariah, hence they proceed to the secular kuffaar courts of their own free will, not as a consequence of any pressure or law of the government.

Fourthly, the Ulama in South Africa are adequately equipped in the knowledge of the Shariah to decide disputes in accordance with the Shariah.

Fifthly, it should not be forgotten for a single moment that the verdicts of the secular court are in terms of kuffaar law which has no relationship with the Shariah. The court has no discretion to issue decrees and verdicts in accordance with the Shariah. The courts are fettered by the atheist and immoral constitution of the country. Should a verdict of the kaafir court conform with a Shariah injunction, it should not be seen as being consequential of a Shar'i approach adopted by the kaafir judge. It will be a pure coincidence. The verdict of the court is dictated by the constitution and law of the country, NEVER by any consideration for the Shariah.

In a recent ruling of the Constitutional Court of South Africa, the judge emphasized that the ruling of the Court is not based on any Shariah injunction/principle. Despite the particular law favouring the Shar'i position, it was the product of the laws and constitution of South Africa.

Sixthly, the Constitution and legal statutes afford Muslims ample latitude to resolve Muslim disputes within the framework of the Shariah, if they opt for the Shar'i route. Thus, if a Muslim does not challenge the Shariah's verdict in the kaafir court, the law will not interfere with the adoption of the Shariah by the Muslim disputing parties.

The aforementioned thus shows the deception and futility of the '*Tamheed*' or *introduction* presented by M.S. Omar in his endeavour to have Shar'i status conferred to the verdicts of the kuffaar courts.

REFUTATION OF THE LAWYER'S CLAIM IN HIS ITEM NO.13

He argues the issue of bestowal of *wilaayat* to a kaafir judge in the light of the principle of *Dhuroorah*. For indulgence in this argument we shall temporarily assume that *wilaayat* can be conferred to a kaafir judge if the *Dhuroorah* exists. The lawyer avers that *Muslims in a non-Muslim country (South Africa with regard to us) have no option but to turn to the secular non-Muslim courts for the acquisition of their rights.*

This averment is extremely dubious and ambiguous. To which right does he refer? Of topical importance currently are marital issues. He has to explain in detail which rights

and which scenarios he has in mind. In almost all cases of disputes which culminate in the secular courts, as has been observed, it is invariably the party who is dissatisfied with the Shariah's ruling who takes the legal route. It is indeed rare that the converse is the case.

If the parties are contented with the Shariah, they can acquire the law of Allah Ta'ala from the Ulama without expending any money whereas they are required to squander huge amounts, even millions, to secure a kaafir verdict from a kaafir judge. It is palpably false and misleading to aver that Muslims are constrained by circumstances of *Dhuroorah* to seek the aid of the kuffaar courts.

It is invariably the miscreant party who is dissatisfied with the Shariah who enlists the aid of the kaafir court to usurp money from the opposite party. There is no such *Dhuroorah* in our country to legitimize the legalization of prohibitions via the kaafir court. It is necessary for the lawyer to present precise examples for his generalizations to enable us to subject his views and baseless 'fatwas' to scrutiny and negation.

In our country it has generally been the case of Muslim lawyers supporting the party, usually an errant wife, in the endeavour to eke out haraam money from her former husband, in conflict with the Shariah.

While we concede that in a non-Muslim country the need does develop to enlist the aid of the police services and the kuffaar courts to sometimes acquire one's rights, this need does not require bestowal of *Wilaayat* to a kaafir judge. The Ulama will issue the verdict, then the coercive power of the state could be enlisted for enforceability. But, *wilaayat* can never be conferred to the kaafir judge regardless of '*dhuroorah*.' According to the law of the country, there is no scope for the application of *Shar'i Wilaayat* to a kaafir judge who is not allowed by the law to issue decrees in the light of the Shariah.

It should be emphasized that the *dhuroorah* stated by the lawyer is nothing but baseless imagination.. There exists no such imperative need in this domain for bestowing *wilaayat* to a kaafir judge. Enforceability and *Wilaayat* are two separate issues which should not be confused. He must explain how Muslims are prejudiced and in which way are they unable to acquire their Shar'i rights.

Enlisting the aid of the kaafir court is like seeking assistance from the police in the kaafir land. The need for such assistance does not require *Wilaayat* over Muslims to be conferred to a kaafir court. If two Muslims have a dispute and they refer to the Ulama, they will obtain the Shar'i ruling. Now if the recalcitrant party refuses to submit to the Shariah and refuses to restore the rights of the other party, the latter may enlist the aid of the kaafir court to claim his right. This is not a scenario of bestowing *Wilaayat* to a kaafir judge. The oppressed Muslim simply utilizes the coercive power of the authorities to gain his Shar'i right on which the Ulama have ruled in the same way as a Muslim would seek assistance from the police to protect him and to regain his property which had been stolen. For such issues there is no need for bestowing *Wilaayat* to the kaafir judge.

Muslims have inhabited South Africa for centuries. There always were Ulama structures to address disputes of such Muslims who desired resolution in terms of the Shariah. And, it has always been seen that the culprit who detests the ruling of the Shariah, is the evil one who rushes to the secular court for claiming 'rights' which according to the Shariah are *baatil* and *zulm*

We see no merit in the attempt of the lawyer to get *wilaayat* bestowed to the kaafir court. Should the Ulama ever become entrapped in this baatil reasoning and issue fatwas to confer wilaayat to a kaafir judge, an extremely wide avenue of Fitnah will be opened up.

While the lawyer has attempted to mislead with his contention of witnesses conforming to the standards of the Shariah, testifying in a kaafir court, it should be remembered that no kaafir court will determine the *adaalat* and the *fisq* of witnesses in terms of the Shariah. The kaafir judge himself, besides being a kaafir, is a faasiq in terms of Shar'i standards.

The lawyer is well aware that in marital cases in this country the law of gender equality reigns supreme. The courts always rule in terms of this concept which is enshrined in the vile constitution of the country. The question of a kaafir court's verdict conforming with the Shariah in South Africa belongs to the realm of dreams. The Shariah's dispensation pertaining to maintenance of divorcees, custody of minors, etc., etc., are extremely 'repugnant' to the law. The court can never issue a verdict to conform with the so-called 'discriminatory' laws of the Shariah – 'discriminatory' against women in their kufr concept – in this country. It is therefore extremely deceptive and misleading to create the impression that the kaafir court in this country will decree according to the Shariah..

Of great importance is to understand that it will always be the party who is discontented with the Shariah who will take the route of the secular court to resolve a dispute. Consider the following examples which occur frequently in our Muslim society in South Africa:

(i) A man issues Talaq to his wife. There is a dispute between them regarding ownership of assets and maintenance (*nafqah*). They proceed to the Ulama for resolving their dispute. The wife demands half of the property and of all the assets of her husband because the law of the land allows her to make this demand. The husband refuses to satisfy her demand and is prepared to pay *Nafqah* for only the *iddat* period. The wife is dissatisfied with this Shar'i decision, hence she goes to court.

The kaafir court will decree in her favour and order the man to pay her half the value of his entire estate, and also maintenance for as long as the court determines is 'equitable' and 'just' in terms of the law/constitution of the country. Now if the Ulama had clothed the kaafir court with *Wilaayat* over Muslims, then in the eyes of the ignorant Muslim masses, this haraam and unjust ruling of the court will have Shar'i validity. This will open the door for all women to take this route without suffering any

pangs of conscience for they will labour under the misconception that the kaafir judge's decree is tantamount to a Shar'i *hukm*.

(ii) Husband and wife separate, the husband having divorced his wife. There are three minor children – a girl of 2 years and two boys of 8 and 9 years. The mother is a *faahishah* while the father is a Deeni conscious person. It was her evil and infidelity which led to the divorce. For custody of the children, they go to the Ulama who issue the following ruling: The mother can retain custody of the 2 year old girl until she reaches 10 years of age. The father has the right of custody of the two boys even if the mother is not an evil woman.

The woman is displeased with this Shar'i ruling, hence she goes to the kaafir court to cancel the verdict of the Ulama. The kaafir judge will incumbently decree in terms of the constitution and laws of the country. His ruling will be that the mother will have custody of the children until they reach the age of 21 years. Meanwhile the father has to pay maintenance for the children until 21 year. Furthermore, such maintenance will be exorbitant because the father has to pay for many haraam items of expenditure which are considered to be in the interests of the children in terms of kuffaar laws. In addition he has to pay exorbitant maintenance for the woman for many years.

Now if the Ulama had conferred *Wilaayat* to the kaafir court, then the impression will be conveyed to all Muslims that this haraam decree is a Shar'i ruling.

(iii) Two Muslims are in a partnership business. They are equal partners After some years the partnership is dissolved. They go to the Ulama for a Shar'i directive regarding division of the assets of the partnership business. The total value of the assets is R2 million. The Ulama decree that each partner is entitled to R1 million. The one partner refuses to accept this Shar'i ruling. He claims that if the business is sold as a going concern, it can be sold for R4 million. He therefore wants his partner to pay him R2 million. On the other hand, the partner has dissolved the partnership, closed the business which operates in his property, and demands that his partner uplifts his R1 million assets.

Since the kaafir court will favour the partner who is claiming R2 million, he goes to court and obtains a verdict which negates the Shar'i ruling. Now if the kaafir judge has been clothed with *Wilaayat*, it will be understood by the Muslim masses that this haraam verdict is in fact the Shariah's position.

These few examples illustrate that the aggrieved party who goes to court is invariably the one who is dissatisfied with the Shariah's ruling.

In his second example on page 8 of his article, Mr.Omar presents the postulate of the kaafir court's decree conforming to the Shariah. Then he poses the question: "Will this decree be valid and enforceable?"

Firstly, the question of 'enforceability' of the kaafir court's ruling is superfluous. In a kaafir land, all rulings of the courts are enforceable. Secondly, even if the kaafir judge's decree conforms to the Shariah, it will be a mere coincidence. Such decree will not be issued by the court on the basis of the Shariah. It will be a decree in terms of the kaafir constitution and laws of the country. Thirdly, should the kaafir judge's

decree conform with the Shariah, the *nifaaz* (enforceability) of the decree is not depended on *Wilaayat*. To enforce the decree which by coincidence conforms to the Shariah, it is not necessary to invest the kaafir judge with *Wilaayat*. The Muslim may simply utilize the services of the authorities to acquire his Shar'i right. *Wilaayat* is not a requisite for acquisition of one's Shar'i right in a non-Muslim country. The argument of Mr.Omar is therefore extremely deceptive and misleading. It is designed to obtain a fatwa on the basis of false premises – a fatwa to bestow to the kaafir court *Wilaayat* over Muslims.

Should there be a need for a Muslim to utilize the facilities of the authorities, whether the courts, the police or any other state agency, for the acquisition of his rights, there is no objection to this. Firstly, he must satisfy himself that he is on the Haqq. He has to obtain a decree from the Ulama stating that his demand is Haqq. If the disputing party refuses to hand over his *huqooq*, he may and can proceed to the kaafir court only if such *huqooq* are consistent with the law and the spirit of the kaafir constitution. If the Shar'i decree conflicts with the law, obviously he cannot have recourse to the kaafir court. If consistent with the law, he can enlist the aid of the court. But, for this there is no need to confer *Wilaayat* to the kaafir judge. In fact, the Muslim whose rights have been usurped has the right to repossess his *huqooq* without recourse to the kaafir court. He requires the court's assistance only if he lacks the means of acquiring his rights from the usurper.

To the best of our knowledge, there has not been a single case in the history of South Africa when a Muslim, especially in a marital dispute, has proceeded to a kaafir court to claim his/her Shar'i rights. All Muslim cases which were adjudicated by kuffaar courts were invariably the acts of *zaalimeen* – of such Muslims who rejected the Shariah's decree, and this is almost always the case of a divorced woman dissatisfied with the Shariah.

It is essential to understand that the route which M.S. Omar desires to be adopted has as its objective the neutralization of the Ulama. M.S.Omar's track record testifies that he is striving to render the Ulama ineffective and to have the kuffaar courts usurp their functions. Since he is a secular lawyer, it should not be difficult to see through the smokescreen which he has created to conceal his agenda, viz., rendering the Shariah and its institutions ineffective by conferring *Wilaayat* to the kuffaar court which will effectively negate the Shariah under guise of the Shariah. This guise will be the effect of the bestowal of *Wilaayat* to the kuffaar court which must incumbently issue decrees in accordance with the country's laws and constitution.

CIVIL MARRIAGE

The law in South Africa does not oblige Muslims to contract civil/legal 'marriages'. Islamic marriages are recognized by the law. Some Muslims contract civil marriages either out of ignorance, without understanding the legal consequence which are in conflict with the Shariah, or because they have some mundane motive.

With regard to civil marriages, the law has made provision for the accommodation of the consequences of the Islamic Nikah. Certain civil marriage options allow for the distribution of the Muslim's estate in accordance with the Shariah's Law of Inheritance. As Muslim are being educated by the Ulama, they are becoming aware of the right civil marriage option to adopt in the event they desire civil registration of their Nikah. We are therefore experiencing that Muslims are now increasingly preparing Islamic Wills to ensure that after their death their estates will be distributed in accordance with the Shariah.

In a nutshell, Muslims are not compelled to adopt any form of civil marriage regime. Their Islamic marriages are valid and there are no adverse consequences of Shar'i marriages. Any adverse consequences are the product of the evil of people who are averse to the Shariah because they see greater monetary benefit for themselves in certain measures of the secular law.

THE SEPARATION OF EXECUTIVE AND JUDICIAL POWERS OF THE STATE

M.S. Omar has introduced this futile dimension merely to darken the page. In reality this system has no bearing on the resolution of Muslim marital disputes. This secular system does not infringe on the domain of the Ulama who enjoy freedom to decide issues in terms of the Shariah. There is absolutely no merit for introducing this dimension in the subject being discussed.

FREEDOM OF RELIGION AND NEUTRALITY

Governments do not accept all aspects of the Shariah despite their proclamation of freedom of religion. The western concept of freedom of religion precludes any Shar'i injunction which conflicts with kufr law. Thus Muslims living in a non-Muslim country are aware of the extremely limited sphere of the concept of 'freedom of religion'. Despite the limitations of this concept, there is generally ample latitude in the law to allow Muslims to manouvre, circumvent and manipulate the laws to ensure that their affairs are conducted in conformity with the Shariah. But this concern is obviously displayed by only those Muslims who believe that the Shariah is Allah's Law. As for those who desire their lives to be conducted in accordance with the secular law, the only option is Ta'leem and Dua for their hidaayat. But, it must be understood that the secular law does not compel Muslims to resolve their disputes in conflict with the Shariah.

The lack of 'neutrality' by the government does not prejudice the Shar'i rights of such Muslims who are desirous of submitting their disputes for Shar'i adjudication. It does not prevent Muslims from going the route of the Shariah.

WILAAAYAT

As far as we Muqallideen are concerned, the basis for the verdict that a kaafir court has no *Wilaayat* over a Muslim, is the unanimous ruing of the Aimmah-e-Mujtahideen.

The injunction on which there exists consensus of the Ummah is that a kaafir court has no *Wilaayat* over Muslims, hence the kaafir court's adjudication in the marital and other affairs of Muslims is simply not valid.

There never develops an imperative need (*Dhuroorah*) for interfering and cancelling this *Ijmaa-ee* injunction of the Shariah even if it is assumed as Mr.Omar alleges that in non-Muslim countries, Muslims have no *ikhtiyaar* other than to turn towards the kuffaar courts for the acquisition of their *huqooq*. In some instances when Muslims feel the need to resort to the courts, they may do so and avail of the assistance of the courts without the need for the Ulama to invest the kaafir judge with *Wilaayat over Muslims*. Such investiture besides being superfluous and laughable is dangerous for Muslims.

It is superfluous and laughable because in a non-Muslim country such as South Africa the courts have no right to decree in accordance with the Shariah even if a Shar'i issue conforms with the law of the land. The decree must necessarily be in terms of the law and the kaafir constitution. The conformity is merely a fortuitous coincidence. The kaafir court will decree *only* in terms of the country's laws.

Mr.Omar has withheld vital information which is essential for the formulation of a correct fatwa. His presentation of the situation is a patchwork from which important issues have been deleted or withheld. For example, he does not mention that in South Africa it is impossible for the courts to even think of issuing decrees in terms of the Shariah. Any dispute between Muslims, which is brought for adjudication will necessarily be decided in strict accordance with the laws and constitution of the land.

He also does not mention that in particular in South Africa, the law and the courts are obsessed with the concept of gender equality, and all Shar'i injunctions which are perceived to be discriminatory against women such as maintenance (*nafaqah*), Talaq, inheritance (*miraath*), custody of minors, etc., will be thrown out of court if any Muslim presents a case for a decree to be issued in terms of the Shariah.

Also, while Mr.Omar mentions the scenario of *Shahaadat in terms of the Shariah* being presented in the kaafir court it is extremely deceptive. It is a total impossibility to apply Shar'i standards for *Shahaadat* in a kaafir court. It is the constitutional right of even a drunkard, gambler, robber, and the most immoral man or woman to testify in the kaafir court. The testimony of a woman is the equivalent of a man's testimony. The suggestion of *Shahaadat* conforming to the Shariah in a kaafir court is absolutely baseless and extremely deceptive.

Thus, Mr.Omar's example number one on page 6 is a gross deception and extremely misleading. It is an unreal scenario. The following incongruencies are contained in this example:

- ? Annulment of a Shar'i Nikah by a kaafir judge. The kaafir court will not entertain such a case. The court will and can annul only a marriage which has

been contracted in terms of the law of the land. The court will not and cannot issue a decree of annulment of a Shar'i Nikah for the simple reason that there is no law which allows the kaafir court to annul a religious marriage. It is impossible for Faatimah to go to court and ask the kaafir judge to annul her Shar'i Nikah. There is no provision in South African law for legal annulment of religious marriages.

- ? Faatimah substantiating her application with Shar'i *Shahaadat* is a total impossibility. Firstly, the court will not listen to her application. Secondly, Shar'i *Shahaadat* is in conflict with the law and constitution of the country.
- ? *Faskh-e-Nikah* according to both the Shariah and the secular law of the land is the domain of the Ulama, not the function of the kaafir court which is averse to entanglement in doctrinal or religious issues. Now if the Ulama had annulled Faatimah's Nikah, what need is there for the kaafir court to confirm such *Faskh*? Regardless of Zaid's rejection of the *Faskh* decree of the Ulama, Faatimah in South Africa has been released from the Nikah of Zaid and is free to marry anyone else on the strength of the *Faskh* decree issued by the Ulama. This is in fact the

position in South Africa – the real position.

- ? By presenting this example, Mr.Omar has endeavoured to mislead and deceive by creating the notion that Faatimah with her Ulama-decreed *Faskh* is helpless and that Zaid's refusal to accept the *Faskh* decree is preventing her from carrying on with her life, namely, that she is unable to get married because her ex-husband refuses to accept the *Faskh* decree of the Ulama, hence there is an imperative need for a kaafir judge to confirm the annulment.

The whole scenario portrayed by Mr.Omar in his first example is unreal and baseless. The *Faskh* decree of the Ulama relative to the Shar'i Nikah is valid in South Africa and the woman is finally and totally released from the marriage bond.

The injunction that a kaafir has no *wilaayat* over a Muslim is not a secondary rule or a derivative from a principle. It is the product of *Nass-e-Qat'i*. This injunction is the actual law as stated in the *Nass*. The condition of Islam is an absolute requisite for the validity of *Wilaayat*. While Mr.Omar has presented the claim of *Dhuroorah*, in reality there is absolutely no imperative need in South Africa for tampering with this *Ijmaa-ee* injunction.

The lawyer's second example

Mr. Omar's second example is sillier than the first example. The woman claims that her husband had divorced her. The husband confirms the correctness of her claim. The termination of the Nikah does not require any further measure for confirmation. The termination of the marriage is not the consequence of the kaafir court's ruling. It is the pure product of the husband's declaration that he has divorced his wife, which claim she even confirms. There is no need for *Bayyinah* in this case. How can this lawyer ask if the marital bond still subsists when the husband declares openly for the whole world to hear that he has divorced his wife, and even his wife confirms the correctness of his claim?

The lawyer's third example

The simple and straightforward answer is that the kaafir's ruling will not be valid because of lack of *Wilaayat*. Secondly, the woman has no need in South Africa to proceed to the kaafir court to obtain a ruling in her favour. She can present her evidence to the Ulama who will issue the Shar'i ruling. The Ulama's ruling will enable her to give expression to the *Tafweedh* with which her husband has invested her.

This lawyer argues in a dream world or imaginary realm. He seeks a ruling for practical issues while ignoring the reality of the situation as it exists in relation to the Muslim community in South Africa. He should therefore present realities. He argues with deception to confuse those who read his article. A Muslim wife in South Africa is not constrained to proceed to a kaafir court to prove the validity of her right to the *Tafweedh* issue. There are Ulama structures in the country to deal with issues of this nature. When there does not even exist a *dhuroorah*, why is the lawyer hell-bent on bypassing the Ulama to confer *Wilaayat* to the kaafir judges?

There is no difference in the invalidity of a kaafir judge's *wilaayat over Muslims* in all Shar'i issues whether these relate to marital or economic or contractual affairs of any department of the Shariah. The kaafir court has no *wilaayat* and the Ulama may not bestow Shar'i *Wilaayat* to a kaafir court. Should it be assumed that *Dhuroorah* permits bestowal of *Wilaayat* to a kaafir judge, the simple response is that there exists absolutely no such *Dhuroorah* in South Africa. Muslims who wish for a Shar'i resolution are free to submit their disputes to the Ulama.

The example which Mr.Omar tenders pertaining to a monetary transaction is grossly misleading. If Zaid is genuine in his claim that Amr owes him a thousand rupees, but Amr refuses to pay, he (Zaid) is entitled to enlist the support of the kuffaar authorities of the land to acquire his Haqq from Amr. To enable Zaid to acquire his right there is no need to bestow the kaafir court with the mantle of *Wilaayat*.

Furthermore, Mr.Omar's averment of Zaid proving his case in a kaafir court with such witnesses whose *Shahaadat* is according to Shar'i standards is also misleading. The kaafir court has no legal right to deny the testimony if it does not conform to the Shariah.

THE UNIQUE STRUCTURES OF THE ULAMA IN SOUTH AFRICA

Despite the kufr constitution and laws of South Africa, the Ulama are free to adjudicate the disputes of Muslims if the latter desire to be governed by the Shariah. And, even if the decree of the Ulama is in conflict with the law and the constitution, the authorities will not interfere if the disputing parties accept the decree. Thus, if the Ulama decree for example, that a divorcee is not entitled to a share of her ex-husband's assets, and the woman accepts this decree, there is nothing to prevent its (the decree's) operation.

Despite the Ulama being bereft of the power of *Nifaaz*, the operation of their decrees is not prevented by law, and as long as the parties submit to the Shariah, there is no problem. However, if one party rejects the Shariah's decree, and proceeds to court, then obviously the ruling of the kaafir court will be *zulm*, as it will be in conflict with the Shariah. Yet, the haraam decree will be enforced.

The question of the kaafir court enforcing a Shar'i decree issued by the Ulama is extremely remote, in particular in marital affairs because the Shar'i masaa-il in marital issues are extremely 'repugnant' and in violation of the kuffaar gender equality concept. Hence, there is absolutely no possibility of a kaafir court issuing a decree which will fortuitously in accordance with the Shariah.

The presence of Ulama structures in South Africa to deal with all types of disputes, and the total impossibility of the kuffaar courts issuing decrees in terms of the Shariah refute the *Dhuroorah* imagined by Mr.Omar, and which he presented as his fundamental basis for his attempt to obtain a fatwa from the Ulama. Furthermore, if it is accepted that there does exist such a *Dhuroorah* as contemplated or imagined by Mr. Omar, the courts in South Africa have no power and no jurisdiction in terms of the land's laws and constitution to issue decrees in terms of the Shariah.

CONCLUSION

(1) In South Africa there exists no *Dhuroorah* for bestowing the mantle of *Wilaayat* over *Muslims* to a kaafir court.

(2) Assuming that there does exist the imagined *Dhuroorah*, there is no way in which the kaafir court could be clothed with the mantle of Shar'i *Wilaayat* in view of the fact that it is only the kufr constitution which governs.

(2) The presence of Ulama structures is adequate to resolve all Muslim disputes in terms of the Shariah.

(3) Hitherto, all Muslim disputes were handled by the Ulama who issue decrees in accordance with the Shariah.

The vital fact to remember is that it is usually only the recalcitrant party – the one who refuses to accept the Shariah's decree – who takes the legal route to seek the decree of the kaafir judge. That means, the desire is only to overrule the Shariah when it serves the monetary or other whims and motives of a recalcitrant party.

The arguments of Mr.Omar have no Shar'i merit and are in total conflict with the teachings and the principles of the Shariah.